

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

MATTHEW McDONALD, et al., . Civil Action No. 18cv697
Plaintiffs, .
vs. . Alexandria, Virginia
September 7, 2018
EDWARD G. ROBINSON, et al., . 10:44 a.m.
Defendants. .
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TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS: CATHY A. HINGER, ESQ.
Womble Bond Dickinson (US) LLP
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FOR EDWARD G. ROBINSON AND Richard C. Baker, ESQ.
EDWARD G. ROBINSON III Baker Simmons
CONSULTING, LLC: 2120 L Street, N.W., Suite 305
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FOR CARLA DeSILVA McPHUN LAURA GOLDEN LIFF, ESQ.
AND CADEM CAPITAL GROUP: MICHAEL B. BROWN, ESQ.
Miles & Stockbridge, PC
1751 Pinnacle Drive, Suite 1500
Tysons Corner, VA 22102

ALSO PRESENT: DENNIS McDONALD
MATTHEW McDONALD

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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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1 P R O C E E D I N G S

2 THE CLERK: Civil Action 18-697, Matthew McDonald, et
3 al. v. Edward G. Robinson, et al. Would counsel please note
4 their appearances for the record.

5 THE COURT: Mr. Baker, you're here for --

6 MR. BAKER: Yes. Good morning, Your Honor.

7 THE COURT: You're here for the, I'm going to call
8 them the Robinson defendants, all right?

9 MR. BAKER: Yes.

10 THE COURT: The individual and the corporation.

11 MR. BAKER: Yes, Your Honor. Richard C. Baker on
12 behalf of the Robinson defendants. May it please the Court.

13 THE COURT: Yes, sir.

14 MS. HINGER: Your Honor, Cathy Hinger from Womble
15 Bond Dickinson, for the plaintiffs, and I'm joined today by my
16 clients, Dennis McDonald and Matthew McDonald, who are members
17 of McDHoldings.

18 THE COURT: All right, good morning.

19 MS. LIFF: Good morning, Your Honor. Laura Liff.
20 I'm here on behalf of Carla McPhun and Cadem Capital Group.
21 With me here today is Michael Brown, and he's going to be
22 handling the argument.

23 THE COURT: All right. And my understanding is that
24 the other defendant, Christian D'Andrade and Choice Management,
25 are in default, correct? They've been served, but they've not

1 responded.

2 MS. HINGER: Correct, Your Honor.

3 THE COURT: And there's no secret, you understand
4 that there's a guilty plea scheduled for this individual on my
5 docket.

6 MS. HINGER: For D'Andrade?

7 THE COURT: I believe so, yes.

8 MS. HINGER: I just learned that this week, either
9 the 17th or the 19th of this month.

10 THE COURT: Right. And there's also a guilty plea
11 scheduled for McPhun. That's coming down the pike. Are you
12 representing her for that, too?

13 MS. LIFF: No, Your Honor.

14 THE COURT: All right. And, Mr. Baker, there's a
15 different -- is there another Robinson involved in this case?

16 MR. BAKER: No, Your Honor.

17 THE COURT: No, all right. Your client is not facing
18 criminal charges, or is he?

19 MR. BAKER: That is correct. He is not.

20 THE COURT: All right, okay.

21 Well, as you know -- and the United States, is there
22 anyone here from the United States?

23 (No response.)

24 THE COURT: We allowed them to intervene. You're all
25 aware of that, correct? So that's going to be a problem in

1 terms of the discovery at this point, but we'll face that down
2 the road.

3 So we have these three motions to dismiss for lack of
4 personal jurisdiction or failure to state a claim, but, you
5 know, this is a RICO case, a civil RICO case, and with civil
6 RICO cases, there's a much broader approach to personal
7 jurisdiction. I really don't think there's any merit to any of
8 these three motions, and I think the response of the plaintiffs
9 has adequately shown that at least at this point, this case
10 involves wire fraud, it involves mail fraud, and it involves
11 all types of fraud. I'm not at all convinced that the RICO
12 count would not be successful down the road.

13 I'll hear any argument any of you want to make, but,
14 I mean, at this point, certainly the victims have had enough
15 connection to the commonwealth. The one entity is in Virginia.
16 There are banking and other transactions that occur in
17 Virginia. That's enough of a hook in a RICO case to allow for
18 personal jurisdiction.

19 So I don't think there's any issue that this case is
20 appropriately in this district and that the defendants have
21 been -- I'm sorry, that the complaint adequately pleads the
22 necessary elements of the offense, but I'll hear any brief
23 response counsel want to make to that.

24 MR. BROWN: Your Honor, we would make a couple of
25 points with respect to the 12(b)(6) argument. First of all,

1 that is that the PSLRA's RICO amendment would bar any action
2 that would be actionable as securities fraud.

3 THE COURT: Yeah, but I'm not at all convinced that
4 these are securities. I mean -- and I think that's something
5 down the road, if there is discovery in this case, you might be
6 able to come back and make that argument to me, but as you
7 know, there were various things that the defendants are alleged
8 to have been selling to the plaintiffs. There were real
9 estate, pieces of property. Then there were just outright
10 loans, as I understand it.

11 So there are different types of what I'll call
12 commodities or things that were being exchanged, and I'm not
13 sure they would all necessarily as a matter of law qualify as
14 securities.

15 MR. BROWN: I appreciate the Court's view on that. I
16 would look to the verified complaint and the allegations there,
17 and that's a basis for our motion. And in the verified
18 complaint, the plaintiffs say repeatedly that each of the
19 transactions, quote, was an investment contract because
20 plaintiffs expected their profits to come solely from the
21 efforts of others, the definition of a security, and they also
22 in the verified complaint stated that each of the transactions
23 was a security, and that's at six different places.

24 Based on that, taking the allegations as true at this
25 stage, we submit -- and recognizing also that the plaintiffs

1 have pleaded both state and federal securities violations, we
2 submit that there is an inconsistency there.

3 And we also would suggest that this is properly
4 resolved at the motion to dismiss stage. The three principal
5 cases on which we rely -- the *MLSMK* case out of the Second
6 Circuit, the *Bald Eagle* case out of the Third Circuit, and the
7 *Capital Investment Funding* case out of South Carolina -- all
8 were resolved at the motion to dismiss stage.

9 So in light of that, we do think it's appropriately
10 dealt with at this stage.

11 THE COURT: All right. I'm still going to deny the
12 motion, without prejudice to it being renewed when we see a
13 fuller record, all right?

14 MR. BROWN: Would the Court entertain argument as to
15 the second argument, which is the pattern of racketeering
16 activity?

17 THE COURT: No. I think it's clearly pled, all
18 right? But thank you.

19 MR. BROWN: I understand.

20 THE COURT: So -- and I don't know what's going to
21 happen. Have you talked, any of you, with the U.S. Attorney's
22 Office as to how they're going to get involved in the discovery
23 in this case?

24 MS. HINGER: Yes, Your Honor.

25 THE COURT: All right. Why don't you tell me what

1 your understanding is just so I can see what's coming down the
2 pike, all right?

3 MS. HINGER: Thank you, Your Honor. My
4 understanding, I learned from Grace Hill on Wednesday that they
5 would be filing the motion to intervene. I have concerns
6 because we were on a tight schedule. We were before Judge
7 Buchanan last month and entered our discovery schedule, so
8 we're launching discovery. We've served some discovery. I've
9 got more going out today to keep with that schedule.

10 My concern is that Mr. McDonald and McDHoldings are
11 not going to be included, is my understanding, as victims in
12 the plea that's being entered by the defendants in this case,
13 and Keisha Williams is not a defendant in this case, so that
14 makes us a little bit unlike any of the cases that she's
15 relying on for her intervention.

16 I did see that you referred her motion to stay to
17 Judge Buchanan, and my hope is that what we can do is reach a
18 stipulated agreement that any testimonial discovery from
19 Ms. McPhun or Mr. D'Andrade can be put off until after the
20 criminal trial. I think as a practical matter, that's what's
21 going to happen anyway, because I'm in document collection mode
22 right now, but the predominant part of my discovery is going to
23 be seeking records from banks and third parties to trace what
24 happened to my clients' money when they took it, and that's
25 uniquely known to Mr. Robinson, the banks that are involved and

1 this other third-party AmeriFunding, so there's a lot of
2 discovery that I can conduct that will not impact, I don't
3 think, in any way the Keisha Williams trial.

4 So my hope is we can negotiate a resolution --

5 THE COURT: All right.

6 MS. HINGER: -- that works for everyone and so we
7 won't have to have a hearing on the 21st in front of Judge
8 Buchanan, or I can present an agreed stipulation, but Ms. Hill
9 felt strongly on Wednesday that she had to file her motion, and
10 we really didn't have time to get through that.

11 She hadn't seen my discovery yet, so I said: Let me
12 get it out, and I did share with her the discovery.

13 THE COURT: All right. But it's your understanding
14 that the McDonalds at this point are not included among the
15 potential victims in this case?

16 MS. HINGER: I think that the U.S. Attorney's Office
17 believes that they were part of the scheme, but they have not
18 been included as victims in the, the conduct that is being
19 indicted, nor are they going to be identified as victims in the
20 pleas, as I understand it.

21 THE COURT: I'm sorry, when you say "part of the
22 scheme," you mean as offenders or as victims?

23 MS. HINGER: As victims.

24 THE COURT: Oh, all right. Yeah.

25 MS. HINGER: I think the case got indicted with a

1 number of victims, and maybe not all of the victims -- offenses
2 against all of the victims were included because it's so many
3 and they don't need that many. I don't know why they're not
4 including my clients in it, but the fact that they intervened
5 in this and the fact that I got the call from Ms. Hill
6 reflects to me that they do understand that they were part of
7 the same -- victims in the same scheme.

8 THE COURT: But you do understand that -- my
9 understanding is that in any fraud case, anyone who can show
10 that they've been the victim of the fraud has a right to apply
11 as a victim in terms of the restitution mechanism that the U.S.
12 Attorney's Office has.

13 MS. HINGER: I expect that we will be doing that,
14 yes.

15 THE COURT: Okay.

16 MS. HINGER: We just learned about this on Wednesday.

17 THE COURT: All right.

18 MS. HINGER: We've just started discussing it with
19 them. So that will be unfolding.

20 THE COURT: All right. Well, we'll have to see how
21 it all plays out, but again, civil litigation is expensive, and
22 to the extent that some issues really may not be defensible, it
23 may make sense to try to work out things as quickly as you can,
24 all right?

25 MS. HINGER: Certainly, Your Honor.

1 THE COURT: All right. So I've ruled on this case,
2 and that concludes the docket for today. We'll adjourn court.

3 MR. BROWN: Your Honor?

4 THE COURT: Yes.

5 MR. BROWN: We would request a stay with respect to
6 our duty to answer the complaint. As the Court is aware, based
7 on the intervention of the United States, based on Ms. McPhun's
8 forthcoming plea and the Williams trial scheduled to begin in
9 October and conclude a few days later in October, we would
10 request and move for a stay of our duty to respond to the
11 complaint.

12 THE COURT: No. No, we need to keep this case
13 moving, and it can't be that complicated to file an answer. A
14 lot of answers are just deny, deny, deny, deny, deny. So no,
15 denied.

16 MR. BROWN: Understood.

17 THE COURT: All right. Adjourn court.

18 (Which were all the proceedings
19 had at this time.)
20

21 CERTIFICATE OF THE REPORTER

22 I certify that the foregoing is a correct transcript of
23 the record of proceedings in the above-entitled matter.
24

25 /s/
Anneliese J. Thomson